IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3758 OF 1994

Maratha Samaj Seva Mandal c/o Chhatrapati Shivaji Prashala... ... Petitioner

V/s

Baburao Rambhau Choudhary & Ors.... ..... Respondents.

Mr.M.R.Deshpande, Adv. for the petitioner.

Mrs.Geeta Mulekar Adv. for the respondent Nos.1(B) to 1(D).

Mr.A.P.Vanarse, AGP for respondent Nos. 2 and 3.

CORAM: A.P. DESHPANDE, J.
2.4.2007

ORAL JUDGMENT:

Before proceeding to consider the writ petition on merit it is necessary to point out that the respondent No.1 viz. Employee had expired on 23.3.1995 and the petitioner brought on record the legal representatives of the deceased. Respondent No.1(A)happenes to be the wife of the deceased and the writ petition came to be dismissed against her by an order dated 21.11.2005. The order passed by the School Tribunal has attained finality so far as respondent No.1(A) is concerned.

2. The petitioner is a Society registered under the Societies Registration

Act and is also a Public Trust governed and regulated by the provisions of Bombay Public Trust Act. The petitioner administers a school wherein the deceased-respondent No.1 Baburao Choudhary was appointed as a clerk with effect from 1.6.1970. In the course of time on 1.6.1973 he came to be promoted as senior clerk. The petitioner took charge of the accounts from respondent No.1 and hand over to one Shri Kadam sometime in the year 1976 and thereafter issued a show cause notice alleging misappropriation of funds by the respondent. The charges framed against the respondent were in relation to misappropriation of sum of Rs.10,000/- and failure to maintain up-to-date accounts. On being served with show cause notice, the respondent replied the same contending that the money in question has been misappropriated by Head Master of the school by not furnishing receipts involving expenditure. Perusal of the reply filed by the respondent clearly demonstrates that the respondent had made allegations against the Head Master and claimed himself to be innocent. In this facts situation the Inquiry Committee was constituted which included the Head Master of the school. Respondent objected to the Head Master being a member of the Inquiry Committee by reiterating that he has made serious allegations against the Head Master about he being responsible for misappropriation of the funds. The objection raised by the respondent was rejected and the inquiry was conducted with the Head Master being one of the members of the Inquiry Committee. The Secretary of the petitioner-society was a practicing advocate who acted as presenting officer before the Inquiry Committee and represented the case of the petitioner. As the petitioner was represented by

legally trained mind the respondent moved an application seeking permission to engage an advocate to defend himself in the inquiry proceedings. The said application came to be rejected on the ground that there is no provision in regard to permitting an employee to be represented by an advocate. The Inquiry Committee concluded the proceedings of inquiry and submitted report recommending termination of service of the respondent. Accepting the report of the Inquiry Committee the respondent was terminated from service and aggrieved thereby respondent filed an appeal before the School Tribunal. The main question that was urged before the school Tribunal was as to whether the inquiry proceedings were conducted in adherence to the principles of natural justice. The School Tribunal has held that the Inquiry was not conducted justly and fairly and was in breach of principles of natural justice. Holding that the inquiry was not just and fair and being in breach of principles of natural justice Tribunal allowed the appeal and quashed and set aside the order of termination. It is this judgment and order passed by the School Tribunal which is challenged by filing present writ petition by the management. It will not be out of place to mention at this stage that during the pendency of the appeal the respondent No.1 attained age of superannuation and hence Tribunal did not grant relief of reinstatement. However other incidental and ancillary reliefs were granted. It was declared that the employee shall be deemed to continue in the employment with continuity of service and with all consequential benefits till date of superannuation.

3. Relying on the judgment in the case of ***Vinayakrao Deshmukh High***

School Society, Nagpur v. ***Deputy Director of Education, Nagpur Division, & Anr.***, reported in 1981 Mh. L.J. 441 the School Tribunal has held that the Head Master ought not to have been nominated as member of the Inquiry Committee as he would definitely have bias against the respondent as the respondent has stated in his reply to the show cause notice that the Head Master himself has misappropriated the money and not the respondent. Taking support from the above referred decision the Tribunal has upheld the contention of the employee. The respondent has placed reliance on a decision in the case of ***Board of Trustees of The Port of Bombay*** v. ***Dilipkumar Raghvendranath Nadkarni & Ors.,*** reported in 1983 Mh. L.J. 1 and contended that the employee ought to have been granted permission to engage an advocate to represent him in the Inquiry proceedings as the management was represented by legally trained mind. Perused the judgment and order passed by the School Tribunal. Same does not suffer from any illegality and hence no interference is called for. In the result writ petition is dismissed. Rule stands discharged with no order as to costs.